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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1942.

No. 249

EMMA A. OUERRACKER, . . . . . Petitioner,

VERSUS

HENDERSON COUNTY, N. C., Bankrupt . . . . . Respondent.

PETITION FOR WRIT OF HABEAS CORPUS TO THE  
UNITED STATES CIRCUIT COURT OF AP.  
PEALS FOR THE FOURTH CIRCUIT

AND

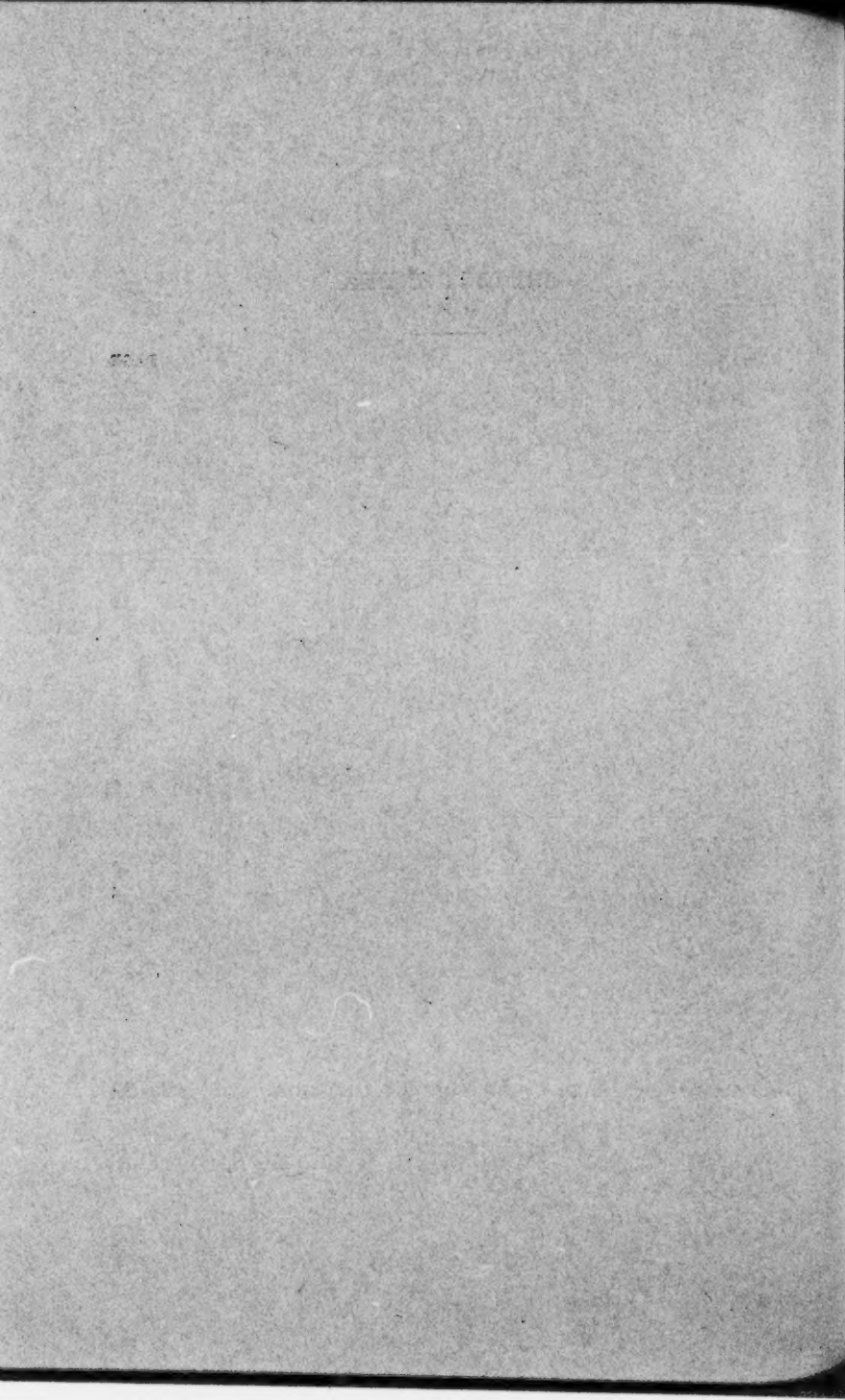
SUPPORTING BRIEF.

HENRY E. MELWAIN, JR.,  
Kentucky Home Life Bldg.,  
Louisville, Ky.

W. F. SANDRIDGE,  
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# Supreme Court of the United States

OCTOBER TERM, 1942.

No. \_\_\_\_\_

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EMMA A. OUERBACKER, - - - - *Petitioner,*

*v.*

HENDERSON COUNTY, N. C., BANKRUPT, - *Respondent.*

---

## **PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF AP- PEALS FOR THE FOURTH CIRCUIT.**

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*To the Honorable the Chief Justice and the Associate  
Justices of the Supreme Court of the United States:*

Emma A. Ouerbacker prays that a writ of certiorari be issued to review the decree entered on February 23, 1942 (Record, p. 95), in the United States Circuit Court of Appeals for the Fourth Circuit in the above entitled cause. An order extending until July 21, 1942, the time within which this petition might be filed was entered by the Chief Justice on May 20, 1942.

### **OPINIONS BELOW.**

The opinion of the Circuit Court of Appeals rendered February 23, 1942 (Record, p. 83), is reported at 126 Fed. (2d) 309.

The order of the District Court approving the plan of composition in bankruptcy is found in the record (Record, pp. 46-55) but is otherwise unreported and no opinion was filed by the District Court.

### **JURISDICTION.**

Jurisdiction is conferred on this Court to review this cause by writ of certiorari by Section 240(a) of the Judicial Code (U. S. C., Title 28, Sec. 347).

### **SPECIFICATION OF ERRORS.**

The Appellate Court erred in affirming the interlocutory decree of the District Court which erroneously confirmed a plan of composition (under Chapter IX of the Bankruptcy Act, 11 U. S. C. A. 401, *et seq.*) of the indebtedness of the respondent, Henderson County.

### **SUMMARY STATEMENT.**

In 1936, respondent, Henderson County, North Carolina, was in financial difficulties. It proposed to its creditors a voluntary refunding plan which extended the maturity of its outstanding bonds and reduced the

interest rates, but made no reduction in the principal indebtedness (Record, p. 3). This plan was declared operative and 98% of the bondholders accepted the plan and exchanged their bonds for refunding bonds. Petitioner was one of the small minority who did not accept the plan or exchange her bonds.

The County operated under the plan from 1936 until 1940 when it again went into default. In 1940, the County proposed to its bondholders a second voluntary refunding plan which further reduced the interest rates and changed the bonds from serial maturities to thirty-year term bonds, callable on any interest date (Record, p. 9). This 1940 voluntary plan had been accepted by over 66 $\frac{2}{3}$ % of the bondholders, many of whom had deposited their bonds for exchange thereunder.

On May 27, 1941, respondent county filed its petition in bankruptcy under Section 83 of the Bankruptcy Act (Record, p. 1). Both the April 1, 1936, and the September 1, 1940, refunding plans were filed with the petition as jointly evidencing the proposed plan of composition.

On the same date (May 27, 1941) the District Court entered an order approving the petition "as properly filed" and fixing August 9, 1941, as the date for hearing.

On July 14, 1941, before any hearings had been held upon said petition, the District Court entered an order on the County's motion, authorizing and empowering respondent county "to make exchange of any or all

of the bonds involved in this proceeding, in accordance with the plan of refinancing set forth in the petition" (Record, p. 33), and the Treasurer and the Local Government Commission were "authorized and *directed* to effect such exchange."

On July 26, 1941, petitioner filed an answer to the petition and objections to the plan of composition (Record, p. 17). Thereafter hearings were had and the District Court on September 4, 1941, entered an order (Record, pp. 46-53) finding that the petition was properly filed and approving the plan of composition. From this interlocutory order an appeal was taken to the Circuit Court of Appeals under Section 83(e) of the Bankruptcy Act. The Circuit Court of Appeals affirmed on February 23, 1942.

It is believed that such further statement of facts as is necessary may best be made in connection with the consideration of the questions involved to which such facts have particular relation.

## QUESTIONS PRESENTED.

### First Question.

Whether the District Court erred in entering its order on July 14, 1941 (Record, p. 33), authorizing and directing the exchange of bonds under the proposed plan of composition prior to a hearing on the merits of the case; and whether the Circuit Court of Appeals erred in affirming this action of the District Court.

In respect to this question the Circuit Court of Appeals said:

“The *ex parte* order of July 14, 1941, permitting the exchange of the bonds under the plan of composition before the plan was actually ratified, was in our opinion premature and improper; but as it turned out, no interested party was prejudiced by the action, and it furnishes no ground for reversing the decree.”

### Reasons Relied on for Allowance of Writ.

The *ex parte* order was “premature and improper” as the Circuit Court of Appeals held. The decision involves an important question arising under the Bankruptcy Act and is probably untenable and presents an important question of Federal law, which has not been, but should be, settled by this Court.

The reason put forward by the Circuit Court of Appeals for its action that “no interested party was prejudiced” is an incorrect assumption. By this order the District Court disclosed inordinate haste and a will-

ingness to subordinate its judgment to what appeared to be the desires of certain creditors. This order actually made the plan permanently effective, whereas the most that could have been done under Section 83(c) was to make it "temporarily operative." The order was entered without notice and before time for filing objections had expired. To all intents and purposes the Court committed itself to an approval of the plan before a hearing. The Court thus created a situation under which it could not thereafter pass judgment upon the fairness of the plan in an impartial manner. By its action it deprived itself of its power to exercise an "informed, independent judgment" as required by the decision of this Court in *American United Mutual Life Insurance Co. v. Avon Park*, 311 U. S. 138, 85 L. Ed. 91.

### Second Question.

Whether the District Court erred in entering an order upon the filing of the petition "approving it as properly filed," under the provisions of Section 83 (a) of the Bankruptcy Act and in permitting the action to proceed, although at the time the petition was filed, the plan of composition had not been accepted in writing by creditors owning not less than 51 per centum in amount of securities affected by the plan as required by said Section 83 (a); and whether the Circuit Court of Appeals erred in approving this erroneous procedure by the District Court.

The Circuit Court of Appeals said "the point has substance" and further said:

"if a motion to dismiss the petition had been made before the acceptances were received, or if the

deficiency had otherwise come to the attention of the District Judge, a dismissal of the petition would have been required."

The Circuit Court of Appeals justified its ruling on the ground that when a motion to dismiss was made on September 4, 1941, on final hearing, a sufficient number of written acceptances had been received and "there being but one objector \* \* \* the objection could have been met completely on September 4, 1941, merely by refiling the petition."

#### **Reasons Relied on for Allowance of Writ.**

The decision of the Circuit Court of Appeals has approved a course of procedure directly contrary to the mandatory provisions of Section 83(a) of the Bankruptcy Act and the decision is probably untenable and concerns an important question of Federal law in the administration of the Bankruptcy Act which has not been, but should be, settled by this Court.

The objection is not purely formal or technical. Acceptances of a voluntary plan of reorganization are one thing and acceptances of a plan of composition in bankruptcy are another. Acceptances received after a petition in bankruptcy is filed are not the same as acceptances required before such a petition can be filed. Section 83(j) of the Bankruptcy Act shows the importance which Congress attached to this question.

When H. R. 9139 containing amendments to the Municipal Bankruptcy Act was before the House in

1940, proposals were made that acceptances under a voluntary refunding plan should automatically constitute acceptances of a similar plan of composition in bankruptcy. These proposals were rejected and the committee on Judiciary in its Report No. 1901 stated its reasons for this rejection as follows:

“Your committee are of the opinion that the time element is important in this connection, and that regardless of the terms and conditions of the plan previously accepted by the bondholders, and even regardless of whether the plan in bankruptcy is not less favorable than the refunding plan previously accepted by the bondholder, the law should permit the bondholder to have the opportunity of accepting or rejecting the plan in bankruptcy at the time such plan is submitted to the bondholder.”

When acceptances were later filed, it appeared that many of them had been executed by agents or representatives of bondholders and the Court made no effort to require any showing of authority by such agents or representatives as required by Section 83(a).

Proceedings under the Municipal Bankruptcy Act are not adversary proceedings in the usual sense. It is the duty of the Bankruptcy Court to require that all proceedings be in conformity with the Act, whether objection is made or not. The County knew that such written consents were necessary because on May 23, 1941, only four days before the petition was filed, it addressed a letter (Record, p. 15) to all bondholders, asking for such written consents, and it knew they had not been received on May 27th. The District Court

should have inquired into this fact, and the County should have disclosed it. Under these circumstances, the petition was not "filed in good faith."

### Third Question.

Whether the District Court erred in finding (Record, p. 48) that in 1940, the County was "insolvent or unable to meet its debts as they matured" under the provisions of Section 83 (a) of the Bankruptcy Act; and whether the Circuit Court of Appeals erred in sustaining such finding of insolvency.

The District Court found that the "plan of 1936 was too burdensome for the taxpayers of the County to meet." It further found that the assessment of \$22,081,210.00 "is excessively high," and further found that to require a levy sufficient to meet its obligations under the 1936 plan "would result in a large number of foreclosures \* \* \* with the ultimate result that the source of revenue from taxation is considerably decreased." The Circuit Court of Appeals affirmed this finding and stated:

"that if the tax rate was made sufficient to meet the County's obligations under the 1936 plan and also the additional School District obligations, the tax would be doubled, additional properties would be taken over by the foreclosure, and the resulting tax collections would be greatly reduced."

and concluded:

"the District Court was justified in its finding that the County was unable to meet its obligations as

they matured, in that a tax levy sufficient for the purpose would result in decreased collections and the taking over of a large amount of property, whereby the financial structure of the county and the value of its securities in the hands of the bondholders would be impaired."

### **Reasons Relied on for Allowance of Writ.**

The decision of the Circuit Court of Appeals that the County was insolvent within the meaning of Section 83(a) of the Bankruptcy Act is a decision of an important question arising under the Act which is probably untenable and is a decision of an important question of Federal law which has not been, but should be, settled by this Court.

While the above statements are presented as findings of fact by the District Court and affirmed as such by the Circuit Court of Appeals, they are unsupported by evidence of any substantial value and are in reality nothing but conclusions. They are based entirely upon an affidavit of the Chairman of the Board of County Commissioners and to a large extent they follow and adopt the language of that affidavit (Record, p. 55).

The question of insolvency within the meaning of Section 83(a) should not be determined upon such unsatisfactory generalities. The conclusions reached are completely refuted by other evidence in the case. The 1936 plan and the 1940 plan were sponsored by the same groups and it may be assumed that the representatives of the creditors and the County carefully

surveyed county valuations and assessments and potential tax rates before recommending each of those plans. The total assessment increased from \$20,661,-097.00 in 1933 to \$22,081,210.00 in 1940 (Record, p. 34). The record fails to disclose any protest as to these valuations until the Board Chairman for the purposes of this case, designated them as "excessively high."

During the same period, the bonded indebtedness decreased from \$3,475,000.00 in 1933 to \$2,638,000.00 in 1940, a decrease of 20.6% (Record, p. 34). While the total county tax rate rose from 95 cents to \$1.25, the portion of the tax allocated to debt service was increased only from 53 cents to 63½ cents. During the same period, the total taxes collected increased from \$132,536.09 in 1933 to \$227,881.71 in 1940, and taxes collected for debt service increased from \$65,185.64 in 1933 to \$105,283.11 in 1940.

Henderson County is not limited in the rate of tax it may levy. The tax levies just prior to the adoption of the 1940 refunding plan were not sufficient even at a 100% collection to meet the principal and interest requirements under the 1936 plan.

Until there has been an actual bona fide effort made to levy and collect taxes sufficient to meet outstanding obligations and until such effort has failed, it is merely speculation to suggest that any particular tax rate will result in diminishing returns. It is difficult to envisage a case of real insolvency where a public debt is only some 12% of the assessed valuation.

If emphasis is placed upon the County's inability "to meet its debts as they mature" such inability re-

lates only to the large amount of past due School District indebtedness, the assumption of which by the County between 1936 and 1940 was solely responsible for this condition. The Circuit Court of Appeals based its finding (*supra*) upon the premise that the County was responsible for the recently assumed School District indebtedness (Record, p. 84). Strangely enough, as hereinafter shown, the School District indebtedness which could not be paid was not included in the plan of composition but all other indebtedness was included.

Again, had the County seen fit to do so it might have issued fifty-year bonds bearing a higher rate of interest than called for by the plan of composition, with an annual tax levy no greater than was pledged under the plan (N. C. Code, Sec. 1334(11)). That such an arrangement would have been to the interest of the creditors is self-evident.

Furthermore, the record is completely silent as to the disposition of tax revenues and general income of the County and the amount and character of expenditures it was making for ordinary governmental expenses. The Court should have made an investigation to determine whether or not savings could be made in general expenditures for the benefit of debt service. *De Foe v. Town of Rutherfordton*, 122 Fed. (2d) 342; *Maryland Casualty Co. v. Leland*, 214 N. C. 235, 199 S. E. 7. Without such showing there was no basis for finding of insolvency.

#### Fourth Question.

Whether the District Court erred in failing to recognize a judgment rendered by that Court in favor of the petitioner against the respondent County as establishing the amount of petitioner's claim as a creditor of the County, and whether as a result of such failure the District Court further erred in approving two plans of composition in the same proceeding; and whether the Circuit Court of Appeals erred in sustaining the District Court's actions in these particulars.

When the County defaulted under the 1936 plan the petitioner obtained a judgment against the County in the District Court for certain interest coupons which had matured and remained unpaid. This judgment was never modified, set aside, nor appealed from. The judgment was rendered August 12, 1940, nine months before the bankruptcy petition was filed, and petitioner offered this judgment as evidencing, in part, the amount of her claim.

The District Court refused to recognize this judgment. This was not a casual oversight, but was done deliberately to force petitioner to exchange her bonds under the 1936 plan. The Circuit Court of Appeals approved this action of the District Court on the ground that

“the objector would have had an unfair advantage over the remaining bondholders if she had been paid the over-due interest on the original bonds held by her instead of the amount of interest payable to her if she had accepted an exchange under the plan of 1936.”

This explains why both the 1936 plan and the 1940 plan were filed with the bankruptcy petition, although the Act does not contemplate the filing of two plans at the same time.

### **Reasons Relied on for Allowance of Writ.**

The decision of the Circuit Court of Appeals approving the action of the District Court in disregarding its own judgment as fixing the amount of petitioner's claim as a creditor of the County was a decision of an important question of general law in a way probably untenable and in conflict with the weight of authority, and was a decision of a federal question in a way probably in conflict with applicable decisions of this Court, and so far sanctions by the District Court such a departure from the usual course of judicial proceedings as to call for an exercise of this Court's power to supervision. Section 63(a) of the Bankruptcy Act (11 U. S. C. 103a) expressly provides that debts founded upon a judgment may be proved and allowed. Section 82 of the Act includes a judgment within the definition of "security." The action approved by the Circuit Court of Appeals is a direct violation of both of these sections.

The District Court in expressly disregarding its own judgment ordered and adjudged (Record, p. 54) that this petitioner "in lieu of her judgment" was

"entitled only to receive interest as provided in the petitioner's plans of refunding."

Having committed one error in failing to recognize its own judgment, the Court was forced to commit a second error in permitting two voluntary plans to be filed at the same time. Whether this is treated as two plans of composition or one plan of composition based upon two voluntary plans, the error is the same because the Court must have granted a hearing on both plans which it utterly failed to do.

The 1936 plan was necessarily a voluntary plan because at that date the Act did not permit the County to file a bankruptcy petition. That plan, however, had been declared operative and 98% of the creditors had finally exchanged under it. By the County's own admission, the 1936 voluntary plan had become no longer feasible or capable of being completed. Therefore, the County had no right to force this bondholder to accept such a plan and the bankruptcy court could not at that time declare such a plan to be either fair or equitable. If the 1936 voluntary plan was to be completed under Section 83(j), this could only be done by a separate proceeding under which all creditors must have had notice and opportunity to re-file their consents.

Furthermore, bondholders' rights must be fixed as of the date of filing the bankruptcy petition. Where petitioner's claim had been reduced to judgment nine months prior to the petition in bankruptcy, the County cannot go back over a period of four years to have her rights determined retroactively.

The County wished to force the petitioner to make an exchange under the 1936 plan, although it had no power to do so and although the Court had to disregard a judgment which it had entered in her favor.

### Fifth Question.

Whether the District Court erred in holding that the plan was "fair, equitable and for the best interests of the creditors" and did not "discriminate unfairly against any creditor or any class of creditors" where a substantial amount of School District indebtedness assumed by the County was not included in the plan; and where the plan required petitioner to make a concession of interest disproportionate to that required of others; and whether the Circuit Court of Appeals erred in reaching a similar conclusion.

The District Court found (Record, p. 48) that respondent County had

"agreed to assume \* \* \* the indebtedness of all the School Districts and levy a general County-wide tax for the purpose of meeting the maturing unpaid indebtedness of the various Districts who had issued special District Bonds."

This created an additional indebtedness on the part of the County in the sum of \$355,000.00, of which approximately \$250,000.00 was past due. With ten years' accrued interest of approximately \$150,000.00 also owing thereon, the total debt assumed was over \$500,000.00, or about 18% of the general debt. This indebtedness is payable out of funds derived from same

source as were the bonds included in the plan of composition. The Circuit Court of Appeals said:

“The School District Bonds are in a separate class, for it appears that the County has assumed the obligation to pay them, and the holders of bonds have the right to look not only to the County, but also to the School Districts themselves for payment.”

#### **Reasons Relied on for Allowance of Writ.**

The decision of the Circuit Court of Appeals that the School District Bonds were in a separate class from other County bonds and that the plan was fair and equitable and non-discriminatory is a decision of an important question under Section 83(b) of the Bankruptcy Act and is probably untenable and is a decision of an important question of Federal law which has not been, but should be, settled by this Court.

Section 83(b) provides, in part,

“that the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class.”

The School District indebtedness assumed by the County is payable out of funds derived from the general power to tax just as is the other County indebtedness. In fact the 1940 plan expressly provided (Record, p. 12):

“In the event that the County is compelled hereafter to assume the present outstanding bonds of school districts within the County, collections from these levies will be applied to the county refunding bonds issued hereunder and to the school bonds, when and if refunded and assumed by the County, in the proportion that the debt of each bears to the total.”

The statement of the Circuit Court of Appeals that the School District bonds were in a separate class because the holders could look both to the County and to the School District for payment does not meet the realities of the situation. If there was not an honest undertaking by the County to assume *sole* responsibility for this School District indebtedness and to completely relieve the Districts of this obligation then the whole process of assumption by the County was nothing but a sham.

The Circuit Court of Appeals further attempted to justify its decision on the ground that:

“The 1940 plan states that the principal holders of Hendersonville Graded School District Bonds have indicated their willingness to accept refunding bonds \* \* \* and that the details of the assumption by the County of the District Bonds will be presented in the form of a refunding plan at an early date.”

This reason for omitting a substantial part of the County indebtedness from the plan of composition is wholly inadequate. The holders of School District

Bonds have committed themselves to nothing. They might consent to a refunding plan or they might not. They might dispose of their bonds to a purchaser who would not so consent, and who might insist upon payment. Thus a part of the bondholders are required to accept a composition while another part of the bondholders are not so required.

The treatment of the School District Bonds by the District Court and the Circuit Court of Appeals has been inconsistent throughout. The existence of this indebtedness was fully considered by the District Court and this added obligation, on the part of the County, was one of the chief reasons for the finding of insolvency. At the preliminary hearing the Honorable County Attorney made the following statement:

“Then changed conditions brought about the necessity of our taking over some obligations in connection with school bonds, which increased our debts on three hundred and fifty or four hundred thousand dollars, of which approximately one-half of that amount fell due or has already matured, so that for this reason it became utterly impossible to carry out the 1936 plan. If we levied for all, the tax rate would have been multiplied four or five times. So in September, 1940 we offered a new plan.”

In other words, the obligation which furnished the basis for the claim that the County was insolvent and entitled to institute bankruptcy proceedings was entirely omitted from the plan of composition. If these obligations were of a separate class as the Circuit Court

of Appeals held and were to be handled under a separate plan of composition they should not have been considered in this proceeding for any purpose. Furthermore, the 1940 plan contained a promise that the School District Bonds would come in under that plan and acceptances of the plan were received on that basis. In no event should the present plan have been approved until this condition had been complied with.

The plan was also unfair and inequitable and discriminated against the petitioner on other grounds. The original bonds carried rates of interest varying from  $4\frac{3}{4}\%$  to  $6\%$ . The 1936 plan (Record, p. 5) provided for all past due coupons and interest to be paid "on a basis representing  $13\frac{1}{4}\%$  annual interest on the outstanding bonds." No provision was made for interest on past due coupons; all new bonds carried the same rate of interest without regard to the interest rates carried by the original bonds; and no effort was made to preserve the original order of maturities.

The Circuit Court of Appeals admitted that this involved "a failure to preserve certain advantages" of this petitioner, but concluded that since most of the creditors had accepted the plan, it should not be set aside. This action also was violative of the spirit of the Act.

### Sixth Question.

Whether the District Court erred in finding that no fiscal agent promoting the composition was compensated by both the debtor County and its creditors and in further finding that the North Carolina Municipal Council, Inc., was not employed by the County to promote the plan of composition, and in refusing to dismiss the petition; and whether the Circuit Court of Appeals erred in approving such findings.

The District Court found (Record, p. 52):

“that the North Carolina Municipal Council, Inc., was not employed by the County, nor was it obligated in any way to participate in, promote or encourage the adoption or approval of the plan of composition.”

The District Court completely disassociated the Council from the bankruptcy proceedings and thus attempted to justify its further finding that no fiscal agent of the County received compensation from both sides. The Council was not a public agency, but only a private corporation fulfilling the ordinary functions of a bondholders' committee.

The Circuit Court of Appeals found no objection to the activities of the Council, largely because no secret profits were involved and compensation of the Council was fully disclosed. The Court said:

“The principle is sound, but the facts affirmatively show that it was not violated in the solicitation of acceptances by the North Carolina Municipal Council in this case. Its employment at

the expense of the county was disclosed on the face of both the 1936 and 1940 plans. Its organization to secure information for the holders of bonds issued by North Carolina government units was not secret, and any bondholder was at liberty to become a member and have the benefit of its services. No member of the Council received any profit or benefit from the employment of the Council by the county, or any benefit from the exchange of bonds under the plan, that was not disclosed by the plan and shared with all creditors alike. In fact, the non-member bondholders were saved the payment of membership dues. The finding of the District Judge to this effect was supported by the evidence."

#### **Reasons Relied on for Allowance of Writ.**

The decision involves an important question arising under Section 83(e) of the Bankruptcy Act, which is probably untenable and presents an important question of Federal law which has not been, but should be, settled by this Court.

The June 28, 1940, amendment to Section 83(e) requires the Bankruptcy Court to carefully examine all transactions to ascertain whether any fiscal agent or other party promoting the composition has been compensated by both the debtor and creditor. The section further provides that:

"if it be found that any such practice be possible he shall forthwith dismiss the proceedings and tax all of the costs against such fiscal agent \* \* \*."

Congress did not approve of the practice whereby a fiscal agent would represent both parties. It did not permit the Court to determine whether harm was done or not, but mandatorily required dismissal of the action if such facts existed. The District Court avoided this question by finding that the North Carolina Municipal Council had nothing to do with the plan of composition. This clearly was incorrect. The Council had promoted the 1936 plan and had also promoted the 1940 plan, and is to receive a fee on each bond deposited under the 1940 plan, even as a plan of composition. It had been paid by the County for such services. After a great number of acceptances had been received for the 1940 plan the county adopted this voluntary refunding plan as its own plan of composition and then claimed that the Municipal Council had dropped out of the picture. In its May 23, 1941, letter to creditors the County asked acceptances for the very plan promulgated by the Council and consents were urged "in view of your assent to and/or your deposits of bonds under the Refunding Plan dated September 1, 1940." The 1940 plan itself had stated: "The County by appropriate proceedings will request the Federal Court of the Western District of North Carolina to approve the terms of this plan." Such an avoidance of the mandatory provisions of the Act is not permissible.

Nor is the situation corrected merely because there was no concealment as the Circuit Court of Appeals held. It is clearly shown in the record that the Council was composed largely of investment dealers and brok-

ers and that the Council was supported by dues paid by its members. The Council was nothing more than a bondholders' committee acting as agent and representative of the bondholders. When it accepted compensation from the county it placed itself in a dual capacity, which is condemned by the Act.

No claim is made in this case that this compensation was concealed or that any secret profit was made by the Council as such. However, it did appear that certain members of the Council sold bonds to the County during the period of default, subsequent to 1933 (Record, p. 36). The District Court made no inquiry into these transactions. The question of the Council's position, however, is of great importance because Municipal Bankruptcy proceedings are customarily initiated and prosecuted under similar arrangements. The decision of the Circuit Court of Appeals if unchallenged and uncorrected would permit this practice to continue, thus opening the door to fraud, and would condone a violation of the express provisions of the Act.

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For the foregoing reasons it is respectfully submitted that this petition should be granted.

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